

REMARKS / DISCUSSION OF ISSUES

Claims 1-21 are pending in the application.

The Examiner provisionally rejects claims 1-4, 6-7, and 9-12 on the grounds of nonstatutory obviousness-type double patenting over claims 1-5, 8-9, and 11-14 of copending application 10/529,353 (hereinafter Rosner) in view of Liao et al. (USP 6,717,915, hereinafter Liao). Because this is a provisional rejection, and the status of claims 1-5, 8-9, and 11-14 of Rosner is yet to be determined, the applicants respectfully decline to file a Terminal Disclaimer until either Rosner or this application are found to be in condition for allowance.

The Examiner rejects claims 1-8 under 35 U.S.C. 101. The applicants respectfully traverse this rejection.

The Examiner asserts that the method claims are not tied to another statutory class, and that the claimed elements could be performed by purely mental steps. This assertion is incorrect.

Claim 1 specifically recites elements that include communications between nodes. Nodes are machines, and the communication between these machines cannot be accomplished by purely mental steps. Because the elements of claims 1-8 are clearly tied to another statutory class, communicating nodes, the applicants respectfully maintain that the rejection of claims 1-8 under 35 U.S.C. 101 is unfounded, and should be withdrawn.

The Examiner rejects claims 1-21 under 35 U.S.C. 103(a) over Lundkvist (USPA 2003/0184431) in view of Fletcher (USP 6,363,477) and Davis (USP 6,088,450). The applicants respectfully traverse this rejection.

The combination of Lundkvist, Fletcher, and Davis fails to teach or suggest a response from a target node that includes a measure of processing time required to generate the response, and fails to teach or suggest determining the proximity of the target node based on a difference between a measure of query-response time and the measure of processing time, as specifically claimed in claim 1, upon which claims 2-8 depend. Independent claims 9 and 15, upon which claims 10-14 and 16-21 depend, respectively, include one or more similar limitations.

The Office action acknowledges that Lundkvist fails to teach a response from a target node that includes a measure of processing time required to generate the response, and asserts that Fletcher provides this teaching at column 18, lines 28-63 and claim 8. This assertion is incorrect. Fletcher discloses that a time stamp is associated with a message at the time that it enters the protocol stack at the sending system and the time that it exits the protocol stack; Fletcher does not teach including a measure of processing time in any of the messages.

Fletcher discloses two messages, a request and a response. When the request is sent, a time-stamp T1 is assigned at the client, and when it is received, a time-stamp T2 is assigned at the server; when the response is sent, a time-stamp T3 is assigned at the server, and a time-stamp T4 is assigned at the client. It is significant to note that the response that is sent from the server (the 'target' node) is only associated with time-stamp T3. It is impossible to determine the processing time at the server based on this single time-stamp T3, and thus this time-stamp T3 cannot be said to correspond to a measure of the processing time.

As disclosed by Fletcher, in order to determine the processing time, a monitoring system must receive a record of the request, and corresponding time-stamps T1 and T2 from the server/target, then correlate this request to a record of the response, and corresponding time-stamps T3 and T4 from the client, then subtract T2 from T3 to determine a measure of the processing time. The applicants provide a technique that eliminates this complex process of Fletcher, by directly providing a measure of the processing time in the response from the server.

Further, the Examiner acknowledges that Lundkvist fails to teach determining the proximity of the target node based on a difference between the query-response time and the measure of processing time, and asserts that Fletcher provides this teaching at column 18, lines 28-63, FIGs. 8-11, and claim 9. This assertion is also incorrect. Nowhere in the cited text does Fletcher address determining a proximity of the server to the client, and in particular, nowhere in the cited text does Fletcher teach determining such proximity based on a difference between a query-response time and the measure of processing time.

The Examiner asserts that Fletcher teaches determining the proximity of one node to another at column 18, lines 57-62:

"In summary, the present invention computes performance statistics for the application response time, application processing time, network latency and protocol latency for a plurality of network applications, and reports the performance statistics to the network manager at a prescribed interval" (Fletcher, column 18, lines 57-62).

As is clearly evident, at the cited text, Fletcher references determining performance statistics, and does not disclose determining the proximity of one node to another, as asserted by the Examiner. The words 'proximity' and 'distance' do not appear anywhere within Fletcher, and thus Fletcher cannot be said to teach determining a proximity of the server to the client, as specifically claimed by the applicants.

Because the combination of Lundkvist, Fletcher, and Davis fails to teach or suggest a response from a target node that includes a measure of processing time required to generate the response, and fails to teach or suggest determining the proximity of the target node based on a difference between a measure of query-response time and the measure of processing time, the applicants respectfully maintain that the rejection of claims 1-21 under 35 U.S.C. 103(a) over Lundkvist, Fletcher, and Davis is unfounded, and should be withdrawn.

In view of the foregoing, the applicants respectfully request that the Examiner withdraw the objection(s) and/or rejection(s) of record, allow all the pending claims, and find the application in condition for allowance. If any points remain in issue that may best be resolved through a personal or telephonic interview, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

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